

PAUL, HASTINGS, JANOFSKY & WALKER LLP
Robert L. Sherman (RS 5520)
75 East 55th Street
New York, NY 10022
Telephone: (212) 318-6000
Facsimile: (212) 318-6847

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIRECT MARKETING EDUCATIONAL
FOUNDATION,

Plaintiff,

Case No. 08 CV 1464 (LMM)

- against -

JOHN WILEY & SONS, INC.,

Defendant.

**DECLARATION OF TERRI L. BARTLETT IN
SUPPORT OF PLAINTIFF DIRECT MARKETING
EDUCATIONAL FOUNDATION'S MOTION
FOR A PRELIMINARY INJUNCTION**

TERRI L. BARTLETT declares as follows:

1. I am the current president of the Direct Marketing Educational Foundation ("DMEF") and submit this declaration in support of DMEF's motion for a preliminary injunction.

The DMEF is a not-for-profit corporation founded in 1966. Its mission is to attract, educate and place top college students by continuously improving and supporting the teaching of world-class direct/interactive marketing.

2. Although college students were its initial target audience, in 1980, DMEF decided to broaden its reach by focusing on professors in order to make a more significant impact in

the higher education field by fostering and supporting teaching and research in the field of direct/interactive marketing at colleges and universities. DMEF aimed to establish direct marketing as a bona fide academic discipline.

3. DMEF offers a variety of programs, initiatives, activities, and resources to further its mission. Those include professor-focused offerings such as curriculum modules, seminars, research summits and conferences, as well as a peer-reviewed academic research journal; student-focused offerings such as graduate seminars, competitions, awards, scholarships, and college and career events and resources; and corporate-focused programs to place students in intern and entry-level positions.

4. When DMEF was founded in 1966, colleges and universities offered few courses regarding direct mail marketing.

5. In large part as a direct result of DMEF's efforts over the past 40 years, there now are 250 colleges offering courses in direct/interactive marketing, 20 direct marketing degree and certificate programs, and undergraduate majors and concentrations in direct marketing at leading educational institutions. In that time, more than 4,000 students and more than 1,700 professors have participated in and taken advantage of DMEF's programs and activities.

6. As part of the expanded mission undertaken in 1980 to establish direct marketing as a bona fide academic discipline, DMEF consulted with a number of experts who indicated that creating a scholarly journal would enable DMEF to make a significant mark in academia, considering the high value that academia places on conducting quality empirical research and having a well-respected peer-reviewed forum in which to publish that research.

7. In 1987, DMEF announced plans to launch the *Journal of Direct Marketing* ("JDM"). Publishing the JDM was consistent with DMEF's mission to strengthen direct/interactive marketing education. DMEF created an Editorial Review Board and solicited manuscripts. In May

1988, the Executive Committee of DMEF's Board of Trustees unanimously approved a proposal to locate the JDM at Northwestern University's renowned Medill School of Journalism ("Medill").

8. In 1987, the first issue of the *Journal of Direct Marketing* was published by the Medill School of Journalism, Department of Advertising, Northwestern University, in cooperation with DMEF. All of the work on the JDM was done at Medill. In 1988, DMEF decided to seek a publisher that would assume responsibility for the non-editorial, business aspects of the journal, such as the production, circulation and marketing. Accordingly, in 1988, DMEF entered into a publishing agreement with the publishing company John Wiley & Sons ("Wiley"), under the terms of which Wiley had responsibility for such non-editorial functions and DMEF was responsible for the editorial content. DMEF appointed the editor, approved appointments to the Editorial Review Board, and alone funded the editorial office.

9. Quite naturally, DMEF intended to retain control of the Journal's editorial content because it knew the significant impact the Journal would have on DMEF's reputation in academic circles. Additionally, DMEF wanted to ensure that any publication bearing its name would be consistent with the high standard DMEF had set since its inception in 1966.

10. As a direct result of DMEF's selection of and collaboration with the Journal's editors, its Editorial Review Board and staff, the Journal is widely recognized as one of the most preeminent scholarly publications in the marketing and advertising arena.

11. In 1998, DMEF changed the name of the Journal to the *Journal of Interactive Marketing* ("JIM") in response to changes in the rapidly-evolving and developing field of direct marketing. DMEF owns a federal trademark registration for JOURNAL OF INTERACTIVE MARKETING.

12. In February 2007, DMEF notified Wiley that it did not intend to renew the parties' publishing agreement at the end of the term ending December 31, 2007.

13. At approximately the same time, DMEF further notified Wiley that it intended to issue a request for proposal (RFP) to several publishers, including Wiley, to solicit proposals for future publication of the Journal. DMEF issued the RFP, to which Wiley responded with a proposal containing essentially the same terms as the parties' prior arrangement. DMEF selected a different publisher, and entered into a publishing agreement with the new publisher, effective January 1, 2008.

14. In or about September 2007, Wiley contacted DMEF and notified DMEF that it intended to publish under the name *Journal of Interactive Marketing* during the year following non-renewal, as provided by the parties' original agreement. Shortly thereafter, DMEF and Wiley discussed several matters relating to non-renewal, including DMEF's right and obligation to control the quality of content published in connection with its name. Although the parties did not agree on all matters, Wiley did not dispute DMEF's right of quality control or that DMEF was the sole owner of the publication's name.

15. In or about November 2007, DMEF learned for the first time that Wiley had changed the process for authors to submit manuscripts to be considered for publication in the JIM. Authors had previously submitted manuscripts to the managing editor, housed in DMEF offices. Without notifying DMEF, Wiley instructed authors to submit manuscripts instead to a contact at Wiley. DMEF objected to this submission procedure because it usurped the current editors' role, which editors had been appointed by DMEF, and the editors' and its Editorial Review Board's role in reviewing and selecting high quality content, because Wiley lacks the necessary knowledge and editorial experience to perform such an editorial role, and because circumventing the established editorial process jeopardizes the quality and reputation of the journal and its authors.

16. At the beginning of January 2008, Wiley informed DMEF that in the first two quarters of 2008 Wiley intends to publish two "Best of" issues under the name *Journal of*

Interactive Marketing. Wiley informed DMEF that it intends to compile those issues from articles that had previously been published in the JIM, and that it would not allow DMEF, its editors or the Editorial Review Board to control, oversee, or participate in the selection of content for the “Best of” issues or any issue that Wiley would publish under the JIM name in 2008.

17. The managing editor at the JIM editorial office has received submissions of new articles that the editors and the Editorial Review Board consider to be timely, relevant, of high quality, and ready to be published in 2008.

18. DMEF objected to Wiley’s stated intention to publish “Best of” issues because it usurps DMEF’s editors’ and its Editorial Review Board’s editorial and quality control role, and because it would jeopardize the JIM’s impact factor and reputation, as well as call into question the reputations and academic standing of its editors and Editorial Review Board, by republishing old material when the editors are in possession of new material, reviewed and approved by the editors and its Editorial Review Board, and which adheres to the JIM’s quality standards. On or about January 14, 2008, I called Wiley to discuss DMEF’s concern and, once again, Wiley rejected any effort by DMEF to exercise its right to control the content of the JIM.

19. DMEF is committed to continuing to publish the JIM as a quarterly academic research journal, building – and in fact expanding -- on the success achieved during the first 20 years.

20. DMEF has worked hard over the past 20 years to ensure that its Journal is a highly respected academic research publication, which has achieved a high ranking and leading worldwide status in the marketing and advertising fields, and believes that its reputation would be severely compromised if DMEF were not allowed to control the Journal’s editorial content.

21. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 12, 2008.



Terri L. Bartlett